

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EUGENE DEE SARHA
P O BOX 2707
ALAMEDA, CA 94501
and
1 EMBARCADERO COVE
OAKLAND, CA 94606-5203

Registered Nurse License No. 470507

Respondent

Case No. 2005-85

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on SEPTEMBER 5, 2005.

IT IS SO ORDERED AUGUST 4, 2005.

Sandra K. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 REBECCA HEINSTEIN, State Bar No. 173202
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Amended Accusation
11 Against:

12 **EUGENE DEE SARHA**
13 P.O. Box 2707
Alameda, California 94501

14 and

15 1 Embarcadero Cove
Oakland, California

16 Registered Nurse License No. 470507

17 Respondent.
18

Case No. 2005-85

OAH No. N2004120128

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
21 above-entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
24 the Board of Registered Nursing. She brought this action solely in her official capacity and is
25 represented in this matter by Bill Lockyer, Attorney General of the State of California, by
26 Rebecca Heinsteins, Deputy Attorney General.

27 2. Respondent Eugene Dee Sarha (Respondent) is represented in this
28 proceeding by attorney Philip A. Schnayerson, whose address is Garcia, Schnayerson & Mockus

1 225 W. Winton Avenue, Suite 208, Hayward, CA 94544.

2 3. On or about August 31, 1991, the Board of Registered Nursing issued
3 Registered Nurse License No. 470507 to Eugene Dee Sarha (Respondent). The license was in
4 full force and effect at all times relevant to the charges brought in Amended Accusation No.
5 2005-85 and will expire on April 30, 2005, unless renewed.

6 **JURISDICTION**

7 4. Amended Accusation No. 2005-85 was filed before the Board of
8 Registered Nursing ("Board"), Department of Consumer Affairs, and is currently pending against
9 Respondent. The Accusation and all other statutorily required documents were properly served
10 on Respondent on March 21, 2005. Respondent timely filed his Notice of Defense contesting the
11 Amended Accusation. A copy of Amended Accusation No. 2005-85 is attached as exhibit A and
12 incorporated herein by reference.

13 **ADVISEMENT AND WAIVERS**

14 5. Respondent has carefully read, fully discussed with counsel, and
15 understands the charges and allegations in Amended Accusation No. 2005-85. Respondent has
16 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
17 Settlement and Disciplinary Order.

18 6. Respondent is fully aware of his legal rights in this matter, including the
19 right to a hearing on the charges and allegations in the Amended Accusation; the right to be
20 represented by counsel at his own expense; the right to confront and cross-examine the witnesses
21 against him; the right to present evidence and to testify on his own behalf; the right to the
22 issuance of subpoenas to compel the attendance of witnesses and the production of documents;
23 the right to reconsideration and court review of an adverse decision; and all other rights accorded
24 by the California Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
26 each and every right set forth above.

27 ///

28 ///

1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in the
3 Third Cause for Discipline in Accusation No. 2005-85.

4 9. Respondent understands that the charges and allegations in the First and
5 Second Causes for Discipline in Accusation No. 2005-85, if proven at a hearing, constitute cause
6 for imposing discipline upon his Registered Nurse License.

7 10. Respondent agrees that his Registered Nurse License is subject to
8 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
9 Disciplinary Order below.

10 **RESERVATION**

11 11. The admissions made by Respondent herein are only for the purposes of
12 this proceeding, or any other proceedings in which the Board or other professional licensing
13 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

14 **CONTINGENCY**

15 12. The parties understand and agree that facsimile copies of this Stipulated
16 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
17 force and effect as the originals.

18 13. In consideration of the foregoing admissions and stipulations, the parties
19 agree that the Board may, without further notice or formal proceeding, issue and enter the
20 following Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Registered Nurse License No. 470507 issued to
23 Respondent Eugene Dee Sarha is revoked. However, the revocation is stayed and Respondent is
24 placed on probation for three (3) years on the following terms and conditions.

25 **Severability Clause.** Each condition of probation contained herein is a separate
26 and distinct condition. If any condition of this Order, or any application thereof, is declared
27 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
28 applications thereof, shall not be affected. Each condition of this Order shall separately be valid

1 and enforceable to the fullest extent permitted by law.

2 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
3 A full and detailed account of any and all violations of law shall be reported by Respondent to
4 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
5 compliance with this condition, Respondent shall submit completed fingerprint forms and
6 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
7 as part of the licensure application process.

8 **Criminal Court Orders:** If Respondent is under criminal court orders, including
9 probation or parole, and the order is violated, this shall be deemed a violation of these probation
10 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

11 2. **Comply with the Board's Probation Program.** Respondent shall fully
12 comply with the conditions of the Probation Program established by the Board and cooperate
13 with representatives of the Board in its monitoring and investigation of the Respondent's
14 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
15 within no more than 15 days of any address change and shall at all times maintain an active,
16 current license status with the Board, including during any period of suspension.

17 Upon successful completion of probation, Respondent's license shall be fully
18 restored.

19 3. **Report in Person.** Respondent, during the period of probation, shall
20 appear in person at interviews/meetings as directed by the Board or its designated
21 representatives.

22 4. **Residency, Practice, or Licensure Outside of State.** Periods of
23 residency or practice as a registered nurse outside of California shall not apply toward a reduction
24 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
25 California. Respondent must provide written notice to the Board within 15 days of any change of
26 residency or practice outside the state, and within 30 days prior to re-establishing residency or
27 returning to practice in this state.

28 Respondent shall provide a list of all states and territories where he has ever been

1 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
2 provide information regarding the status of each license and any changes in such license status
3 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
4 new nursing license during the term of probation.

5 **5. Submit Written Reports.** Respondent, during the period of probation,
6 shall submit or cause to be submitted such written reports/declarations and verification of actions
7 under penalty of perjury, as required by the Board. These reports/declarations shall contain
8 statements relative to Respondent's compliance with all the conditions of the Board's Probation
9 Program. Respondent shall immediately execute all release of information forms as may be
10 required by the Board or its representatives.

11 Respondent shall provide a copy of this Decision to the nursing regulatory agency
12 in every state and territory in which he has a registered nurse license.

13 **6. Function as a Registered Nurse.** Respondent, during the period of
14 probation, shall engage in the practice of registered nursing in California for a minimum of 24
15 hours per week for 6 consecutive months or as determined by the Board.

16 For purposes of compliance with the section, "engage in the practice of registered
17 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
18 work in any non-direct patient care position that requires licensure as a registered nurse.

19 The Board may require that advanced practice nurses engage in advanced practice
20 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
21 Board.

22 If Respondent has not complied with this condition during the probationary term,
23 and Respondent has presented sufficient documentation of his good faith efforts to comply with
24 this condition, and if no other conditions have been violated, the Board, in its discretion, may
25 grant an extension of Respondent's probation period up to one year without further hearing in
26 order to comply with this condition. During the one year extension, all original conditions of
27 probation shall apply.

28 ///

1 7. **Employment Approval and Reporting Requirements.** Respondent
2 shall obtain prior approval from the Board before commencing or continuing any employment,
3 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
4 performance evaluations and other employment related reports as a registered nurse upon request
5 of the Board.

6 Respondent shall provide a copy of this Decision to his employer and immediate
7 supervisors prior to commencement of any nursing or other health care related employment.

8 In addition to the above, Respondent shall notify the Board in writing within
9 seventy-two (72) hours after he obtains any nursing or other health care related employment.

10 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
11 or separated, regardless of cause, from any nursing, or other health care related employment with
12 a full explanation of the circumstances surrounding the termination or separation.

13 8. **Supervision.** Respondent shall obtain prior approval from the Board
14 regarding Respondent's level of supervision and/or collaboration before commencing or
15 continuing any employment as a registered nurse, or education and training that includes patient
16 care.

17 Respondent shall practice only under the direct supervision of a registered nurse
18 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
19 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
20 are approved.

21 Respondent's level of supervision and/or collaboration may include, but is not
22 limited to the following:

23 (a) Maximum - The individual providing supervision and/or collaboration is
24 present in the patient care area or in any other work setting at all times.

25 (b) Moderate - The individual providing supervision and/or collaboration is in
26 the patient care unit or in any other work setting at least half the hours Respondent works.

27 (c) Minimum - The individual providing supervision and/or collaboration has
28 person-to-person communication with Respondent at least twice during each shift worked.

1 (d) Home Health Care - If Respondent is approved to work in the home health
2 care setting, the individual providing supervision and/or collaboration shall have person-to-
3 person communication with Respondent as required by the Board each work day. Respondent
4 shall maintain telephone or other telecommunication contact with the individual providing
5 supervision and/or collaboration as required by the Board during each work day. The individual
6 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
7 site visits to patients' homes visited by Respondent with or without Respondent present.

8 9. **Employment Limitations.** Respondent shall not work for a nurse's
9 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
10 traveling nurse, or for an in-house nursing pool.

11 Respondent shall not work for a licensed home health agency as a visiting nurse
12 unless the registered nursing supervision and other protections for home visits have been
13 approved by the Board. Respondent shall not work in any other registered nursing occupation
14 where home visits are required.

15 Respondent shall not work in any health care setting as a supervisor of registered
16 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
17 nurses and/or unlicensed assistive personnel on a case-by-case basis.

18 Respondent shall not work as a faculty member in an approved school of nursing
19 or as an instructor in a Board approved continuing education program.

20 Respondent shall work only on a regularly assigned, identified and predetermined
21 worksite(s) and shall not work in a float capacity.

22 If Respondent is working or intends to work in excess of 40 hours per week, the
23 Board may request documentation to determine whether there should be restrictions on the hours
24 of work.

25 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
26 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
27 than six months prior to the end of his probationary term.

28 Respondent shall obtain prior approval from the Board before enrolling in the

1 course(s). Respondent shall submit to the Board the original transcripts or certificates of
2 completion for the above required course(s). The Board shall return the original documents to
3 Respondent after photocopying them for its records.

4 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with
5 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
6 amount of \$10,000.00. Respondent shall be permitted to pay these costs in a payment plan
7 approved by the Board, with payments to be completed no later than three months prior to the
8 end of the probation term.

9 If Respondent has not complied with this condition during the probationary term,
10 and Respondent has presented sufficient documentation of his good faith efforts to comply with
11 this condition, and if no other conditions have been violated, the Board, in its discretion, may
12 grant an extension of Respondent's probation period up to one year without further hearing in
13 order to comply with this condition. During the one year extension, all original conditions of
14 probation will apply.

15 **12. Violation of Probation.** If Respondent violates the conditions of his
16 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
17 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

18 If during the period of probation, an accusation or petition to revoke probation has
19 been filed against Respondent's license or the Attorney General's Office has been requested to
20 prepare an accusation or petition to revoke probation against Respondent's license, the
21 probationary period shall automatically be extended and shall not expire until the accusation or
22 petition has been acted upon by the Board.

23 **13. License Surrender.** During Respondent's term of probation, if he ceases
24 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
25 probation, Respondent may surrender his license to the Board. The Board reserves the right to
26 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
27 take any other action deemed appropriate and reasonable under the circumstances, without
28 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent

1 will no longer be subject to the conditions of probation.

2 Surrender of Respondent's license shall be considered a disciplinary action and
3 shall become a part of Respondent's license history with the Board. A registered nurse whose
4 license has been surrendered may petition the Board for reinstatement no sooner than the
5 following minimum periods from the effective date of the disciplinary decision:

6 (1) Two years for reinstatement of a license that was surrendered for any
7 reason other than a mental or physical illness; or

8 (2) One year for a license surrendered for a mental or physical illness.

9 14. **Physical Examination.** Within 45 days of the effective date of this
10 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
11 physician assistant, who is approved by the Board before the assessment is performed, submit an
12 assessment of the Respondent's physical condition and capability to perform the duties of a
13 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
14 medically determined, a recommended treatment program will be instituted and followed by the
15 Respondent with the physician, nurse practitioner, or physician assistant providing written
16 reports to the Board on forms provided by the Board.

17 If Respondent is determined to be unable to practice safely as a registered nurse,
18 the licensed physician, nurse practitioner, or physician assistant making this determination shall
19 immediately notify the Board and Respondent by telephone, and the Board shall request that the
20 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
21 shall immediately cease practice and shall not resume practice until notified by the Board.
22 During this period of suspension, Respondent shall not engage in any practice for which a license
23 issued by the Board is required until the Board has notified Respondent that a medical
24 determination permits Respondent to resume practice. This period of suspension will not apply
25 to the reduction of this probationary time period.

26 If Respondent fails to have the above assessment submitted to the Board within
27 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
28 practice until notified by the Board. This period of suspension will not apply to the reduction of

1 this probationary time period. The Board may waive or postpone this suspension only if
2 significant, documented evidence of mitigation is provided. Such evidence must establish good
3 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
4 provided. Only one such waiver or extension may be permitted.

5 **15. Participate in Treatment/Rehabilitation Program for Chemical**
6 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
7 period or shall have successfully completed prior to commencement of probation a Board-
8 approved treatment/rehabilitation program of at least six months duration. As required, reports
9 shall be submitted by the program on forms provided by the Board. If Respondent has not
10 completed a Board-approved treatment/rehabilitation program prior to commencement of
11 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
12 a program. If a program is not successfully completed within the first nine months of probation,
13 the Board shall consider Respondent in violation of probation.

14 Based on Board recommendation, each week Respondent shall be required to
15 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
16 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
17 by the Board. If a nurse support group is not available, an additional 12-step meeting or
18 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
19 such attendance to the Board during the entire period of probation. Respondent shall continue
20 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
21 mental health examiner and/or other ongoing recovery groups.

22 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
23 shall completely abstain from the possession, injection or consumption by any route of all
24 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
25 the same are ordered by a health care professional legally authorized to do so as part of
26 documented medical treatment. Respondent shall have sent to the Board, in writing and within
27 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
28 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the

1 medication will no longer be required, and the effect on the recovery plan, if appropriate.

2 Respondent shall identify for the Board a single physician, nurse practitioner or
3 physician assistant who shall be aware of Respondent's history of substance abuse and will
4 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
5 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
6 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
7 condition. If any substances considered addictive have been prescribed, the report shall identify a
8 program for the time limited use of any such substances.

9 The Board may require the single coordinating physician, nurse practitioner, or
10 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
11 addictive medicine.

12 **17. Submit to Tests and Samples.** Respondent, at his expense, shall
13 participate in a random, biological fluid testing or a drug screening program which the Board
14 approves. The length of time and frequency will be subject to approval by the Board.
15 Respondent is responsible for keeping the Board informed of Respondent's current telephone
16 number at all times. Respondent shall also ensure that messages may be left at the telephone
17 number when he is not available and ensure that reports are submitted directly by the testing
18 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
19 to the Board by the program and Respondent shall be considered in violation of probation.

20 In addition, Respondent, at any time during the period of probation, shall fully
21 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
22 tests and samples as the Board or its representatives may require for the detection of alcohol,
23 narcotics, hypnotics, dangerous drugs, or other controlled substances.

24 If Respondent has a positive drug screen for any substance not legally authorized
25 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
26 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
27 from practice pending the final decision on the petition to revoke probation or the accusation.
28 This period of suspension will not apply to the reduction of this probationary time period.

1 If Respondent fails to participate in a random, biological fluid testing or drug
2 screening program within the specified time frame, Respondent shall immediately cease practice
3 and shall not resume practice until notified by the Board. After taking into account documented
4 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
5 Board may suspend Respondent from practice pending the final decision on the petition to
6 revoke probation or the accusation. This period of suspension will not apply to the reduction of
7 this probationary time period.

8 18. **Mental Health Examination.** Respondent shall, within 45 days of the
9 effective date of this Decision, have a mental health examination including psychological testing
10 as appropriate to determine his capability to perform the duties of a registered nurse. The
11 examination will be performed by a psychiatrist, psychologist or other licensed mental health
12 practitioner approved by the Board. The examining mental health practitioner will submit a
13 written report of that assessment and recommendations to the Board. All costs are the
14 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
15 result of the mental health examination will be instituted and followed by Respondent.

16 If Respondent is determined to be unable to practice safely as a registered nurse,
17 the licensed mental health care practitioner making this determination shall immediately notify
18 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
19 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
20 practice and may not resume practice until notified by the Board. During this period of
21 suspension, Respondent shall not engage in any practice for which a license issued by the Board
22 is required, until the Board has notified Respondent that a mental health determination permits
23 Respondent to resume practice. This period of suspension will not apply to the reduction of this
24 probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within
26 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
27 practice until notified by the Board. This period of suspension will not apply to the reduction of
28 this probationary time period. The Board may waive or postpone this suspension only if

significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

19. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Philip A. Schnayerson. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing, Department of Consumer Affairs.

DATED: 4/5/05


EUGENE DEE SARHA
Respondent

I have read and fully discussed with Respondent Eugene Dee Sarha the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4/7/05


PHILIP A. SCHNAYERSON
Attorney for Respondent

///

///

///

1 BILL LOCKYER, Attorney General
of the State of California
2 REBECCA M. HEINSTEIN, State Bar No. 173202
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Amended Accusation
Against:

13 **EUGENE DEE SARHA**
P.O. Box 2707
14 Alameda, California 94501

15 and

16 1 Embarcadero Cove
Oakland, California

17 Registered Nurse License No. 470507

18 Respondent.

Case No. 2005-85

OAH No. N2004120128

AMENDED ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Amended
23 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
24 Nursing, Department of Consumer Affairs.

25 2. On or about August 31, 1991, the Board of Registered Nursing issued
26 Registered Nurse License No. 470507 to Eugene Dee Sarha (Respondent). The Registered Nurse
27 license was in full force and effect at all times relevant to the charges brought herein and will
28

1 expire on April 30, 2005, unless renewed.

2 **JURISDICTION**

3 3. This Amended Accusation is brought before the Board of Registered
4 Nursing (Board), Department of Consumer Affairs, under the authority of the following laws.
5 All section references are to the Business and Professions Code (Code) unless otherwise
6 indicated.

7 4. Section 2750 of the Code provides, in pertinent part, that the Board may
8 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
9 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

10 5. Section 2764 of the Code provides, in pertinent part, that the expiration of
11 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
12 against the licensee or to render a decision imposing discipline on the license. Under section
13 2811(b) of the Code, the Board may renew an expired license at any time within eight years after
14 the expiration.

15 6. Section 2761(a) of the Code states, in pertinent part, that the Board may
16 take disciplinary action against a certified or licensed nurse or deny an application for a
17 certificate or license for unprofessional conduct .

18 7. Section 2762 of the Code states, in pertinent part, that in addition to other
19 acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice
20 Act], it is unprofessional conduct for a person licensed under this chapter to do any of the
21 following:

22 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a
23 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
24 or administer to another, any controlled substance as defined in Division 10 (commencing with
25 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
26 defined in Section 4022.

27

28 ///

8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

9. Section 4060 of the Code states, in pertinent part, that no person shall possess any controlled substance except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian.

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

11. **"Methamphetamine"** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

12. **"Marijuana"** is a Schedule I controlled substance as designated by Health and Safety Code section 11054 (d)(13).

13. **“Cetacaine”** is a dangerous drug within the meaning of section 4022 of the Code in that it requires a prescription under federal law.

14. **"Lidocaine"** is a dangerous drug within the meaning of section 4022 of the Code in that it requires a prescription under federal law.

15. **"Promethazine"** is a dangerous drug within the meaning of section 4022 of the Code in that it requires a prescription under federal law.

16. **"Pancuronium Bromide"** is a dangerous drug within the meaning of section 4022 of the Code in that it requires a prescription under federal law.

17. **"Bacteriostatic"** is a dangerous drug within the meaning of section 4022 of the Code in that it requires a prescription under federal law.

///

/ / /

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Possession of a Controlled Substance)**

3 18. Respondent is subject to disciplinary action under section 2761(a) of the
4 Code on the grounds of unprofessional conduct, as defined by section 2762(a) of the Code, in
5 that on or about March 4, 2004, Respondent possessed approximately 5.81 grams of
6 methamphetamine in violation of section 4060 of the Code.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Possession of a Controlled Substance)**

9 19. Respondent is subject to disciplinary action under section 2761(a) of the
10 Code on the grounds of unprofessional conduct, as defined by section 2762(a) of the Code, in
11 that on or about March 4, 2004, Respondent possessed approximately 9.6 grams of marijuana in
12 violation of section 4060 of the Code.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Furnish Dangerous Drugs Without a Prescription)**

15 20. Respondent is subject to disciplinary action under section 2761(a) of the
16 Code on the grounds of unprofessional conduct, as defined by section 2762(a) of the Code, in
17 that Respondent furnished Cetacaine, Lidocaine, Promethazine, Pancuronium Bromide and
18 Bacteriostatic to himself without a prescription in violation of section 4059 of the Code.
19 prescription.

20 **PRAAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


- 23 1. Revoking or suspending Registered Nurse License Number 470507, issued
24 to Respondent Eugene Dee Sarha.
- 25 2. Ordering Respondent Eugene Dee Sarha to pay the Board of Registered
26 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
27 Business and Professions Code section 125.3;

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/14/05


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

BILL LOCKYER, Attorney General
of the State of California
REBECCA M. HEINSTEIN, State Bar No. 173202
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5604
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

EUGENE DEE SARHA
P.O. Box 2707
Alameda, California 94501

and

1 Embarcadero Cove
Oakland, California

Registered Nurse License No. 470507

Respondent.

Case No. *2005 - 85*

OAH No.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about August 31, 1991, the Board of Registered Nursing issued Registered Nurse License No. 470507 to Eugene Dee Sarha (Respondent). The Registered Nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761(a) of the Code states, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct .

7. Section 2762 of the Code states, in pertinent part, that in addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

8. Section 4060 of the Code states, in pertinent part, that no person shall possess any controlled substance except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian.

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

10. **"Methamphetamine"** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

CAUSE FOR DISCIPLINE

(Possession of a Controlled Substance)

11. Respondent is subject to disciplinary action under section 2761(a) of the Code on the grounds of unprofessional conduct, as defined by section 2762(a) of the Code, in that on or about March 4, 2004 Respondent possessed approximately 13.8 grams of methamphetamine in violation of section 4060 of the Code.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 470507, issued to Respondent Eugene Dee Sarha.

2. Ordering Respondent Eugene Dee Sarha to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 11/9/04

Ruth Ann Terry
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant